

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

NICOLE L. CROY; PAULA JOBE
a/k/a PAULA KURTZ; JEFFREY D.
COLLINS; CAM J. COLLINS; SHAEN
D. MCELRAVY; JODY MCELRAVY;
KAREN M. HAYWARD; RONALD C.
HAYWARD; and BRAD
MAGRUDER,

Plaintiffs,

vs.

RAVALLI COUNTY, in its official
capacity; BOARD OF
COMMISSIONERS OF RAVALLI
COUNTY, in its official capacity; LEE
E. FOSS; FOSS REALTY, INC., a
Montana Profit Corporation;
WESTERN MONTANA
EXCAVATION LLC, a Montana
Limited Liability Company;
SUNNYSIDE ORCHARDS, LLC, a
Foreign Limited Liability Corporation;
STARLIGHT INTERESTS, LLC, a
Georgia Limited Liability Company;
and JOHN DOES 1-15,

Defendants.

CV 19-77-M-DWM

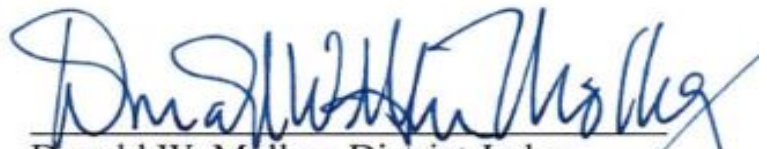
ORDER

On April 26, 2019, Plaintiffs, a group of landowners in Ravalli County, sued the County (“Public Defendants”) as well as one individual and four business entities (“Private Defendants”) in a road dispute, alleging fifteen causes of action under both federal and state law. (Doc. 1.) On October 28, 2019, Plaintiffs timely

filed their Third Amended Complaint. (*See* Sched. Or., Doc. 44 at ¶ 1; Doc. 48.) The Third Amended Complaint adds to and clarifies certain factual allegations, (*see, e.g.*, Doc. 48 at ¶ 15), but maintains the same causes of action, (*see id.* at ¶¶ 58–122).

Accordingly, IT IS ORDERED that the Third Amended Complaint (Doc. 48) is accepted as filed. The Foss Defendants’ second motion to dismiss (Doc. 25) is DENIED as MOOT. The Foss Defendants may once again refile their motion, or answer, within the 21 days provided by Rule 12. *See* Fed. R. Civ. P. 12(a)(1)(A)(i). However, to aid in “secur[ing] the just, speedy, and inexpensive determination” of this proceeding, Fed. R. Civ. P. 1, it is worth noting that the Foss Defendants’ extensive reliance on the contents of judicially-noticed documents to establish facts in dispute supports converting any future motion to dismiss into a motion for summary judgment. Thus far, the Court has merely taken judicial notice of the existence of certain public records, not their contents or the validity of the facts stated therein. *See Lee v. City of L.A.*, 250 F.3d 668, 689–90 (9th Cir. 2001) (holding that a court abused its discretion by taking “judicial notice of *disputed* facts stated in public records”).

DATED this 5th day of November, 2019.


Donald W. Molloy, District Judge
United States District Court